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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

DAVID ZITTING, Individually, and as
Special Administrator of the Estate of JOHN
ADAIR ZITTING, Deceased, and on behalf
of his survivors, beneficiaries, and heirs;
DARREL R. BLACKMORE and CARL N.
BLACKMORE, Individually, and as Co-
Administrators of the Estate of KAREN
BLACKMORE ZITTING, Deceased, and on
behalf of her survivors, beneficiaries, and
heirs; and ROSALEE BLACKMORE,
Individually, and as Special Administrator of
the Estate of MINOR CHILD J.B.Z.,
Deceased, and on behalf of his survivors,
beneficiaries, and heirs,

Case No.:

COMPLAINT

Wrongful Death Action (28 U.S.C. § 2671 et
seq.)

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

COME NOW the Plaintiffs, by and through their attorneys, Friedman | Rubin PLLP and allege as follows:

INTRODUCTION

1. This is a wrongful death, negligence, survival and injury action brought by Plaintiffs who are the surviving heirs and personal representatives of the Estates of John Adair Zitting, Karen Blackmore Zitting, and minor child J.B.Z., who died in an April 7, 2017 plane crash near Harrisburg, Oregon. The aircraft was a Piper PA 46-310P, registration N123SB, operated by Park City Aviation, LLC as a personal flight (“subject aircraft”) was travelling from Van Nuys, California to Eugene, Oregon (“subject flight”).

2. N123SB was traveling in the vicinity of Harrisburg, Oregon, as it approached an area with dangerous weather conditions along its flight route.

3. While the flight was en route, several Pilot Reports (“PIREPs”) were issued for the area of the accident site. The PIREPs also indicated the potential of low-level wind shear near the destination airport.

4. Despite the available weather information, the Federal Aviation Administration (“FAA”) air traffic controller did not provide the PIREP information to the pilot of the subject flight in violation of FAA Order JO 7110.65, Air Traffic Control, the published FAA guidance for controllers.

5. Air traffic control directed the pilot of N123SB into a reported 48-knot headwind. The pilot and three passengers died in the crash.

JURISDICTION AND VENUE

6. This action is properly brought before the United States District Court for the District of Oregon pursuant to 28 U.S.C. § 2671 et seq. (commonly known as the Federal Tort Claims Act (“FTCA”)).

7. This Court is vested with jurisdiction over this matter pursuant to 28 U.S.C. § 1346(b), as the action arises from personal injury caused by the negligent or wrongful act or omission of any employee of the Government acting within the scope of his or her office or employment.

8. Defendant United States of America will be served through the U.S. attorney for the District of Oregon and the Attorney General of the U.S. at Washington, D.C., pursuant to Rule 4(i) of the Federal Rules of Civil Procedure.

9. Plaintiffs timely filed the administrative Standard Form 95 claims with the U.S. Department of Transportation, FAA on March 28, 2019, and waited the requisite six months before filing suit.

10. Additionally, this Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1402.

11. Venue is proper in the United States District Court for the District of Oregon under 28 U.S.C. §1391(b) because the causes of action upon which the Complaint is based occurred when the aircraft crashed in Harrisburg, Oregon while it was travelling from Van Nuys, California to Eugene, Oregon.

PARTIES

12. Plaintiff David Zitting has been appointed as the Special Administrator for the Estate of John Adair Zitting.

13. John Adair Zitting died in the April 7, 2017 crash of the Piper PA 46-310P, registration N123SB, operated by Park City Aviation, LLC, near Harrisburg, Oregon.

14. Plaintiff Darrel R. Blackmore has been appointed as the co-Administrator for the Estate of Karen Blackmore Zitting.

15. Plaintiff Carl N. Blackmore has been appointed as the Special Administrator for the Estate of Karen Blackmore Zitting.

16. Karen Blackmore Zitting died in the April 7, 2017 crash of the Piper PA 46-310P, registration N123SB, operated by Park City Aviation, LLC, near Harrisburg, Oregon.

17. Plaintiff Rosalee Blackmore has been appointed as the Special Administrator for the Estate of Minor Child J.B.Z.

18. Minor Child J.B.Z. died in the April 7, 2017 crash of the Piper PA 46-310P, registration N123SB, operated by Park City Aviation, LLC, near Harrisburg, Oregon.

19. Defendant United States of America, acting through its agents and employees of the Department of Transportation, Federal Aviation Administration (“FAA”), office of Air Traffic Organization, was in control of and operated the Eugene Air Traffic Control Tower/TRACOR.

20. At all times material hereto all agents and employees of the FAA office of Air Traffic Organization were and are agents of Defendant United States of America.

21. At all times relevant and material hereto, Defendant has carried out, and continues to carry out, substantial, continuous, and systematic activities in the State of Oregon and has purposely established significant contacts within Oregon.

22. The injuries and damages alleged in this lawsuit arise out of, and are related to, Defendant’s contacts and activities in the State of Oregon.

23. At all relevant times, Defendant was acting by and through its employees, servants, agents, workmen, and/or staff, all of whom were acting within the course and scope of their employment, for and on behalf of the Defendant.

DEFENDANT’S DUTIES OF CARE AND PLAINTIFFS’ FACTUAL AVERMENTS

24. Defendant United States of America, acting through its agents and employees of the Department of Transportation, Federal Aviation Administration (“FAA”), office of Air Traffic Organization, owed a duty to advise the pilot of N123SB of the dangerous weather conditions along the flight route.

25. Defendant United States of America, acting through its agents and employees of the Department of Transportation, Federal Aviation Administration (“FAA”), office of Air Traffic Organization, owed a duty to route N123SB around the area experiencing dangerous weather conditions to protect its pilot and passengers, including Decedents, from suffering injury.

26. On or about April 7, 2017, Decedents, John Adair Zitting, Karen Blackmore Zitting, and Minor Child J.B.Z., were passengers on board the Piper PA 46-310P, registration N123SB that was owned, operated, maintained, and controlled by Park City Aviation, LLC.

27. Upon information and belief, the Piper PA 46-310P, registration N123SB, departed from Van Nuys, California at 07:27 a.m., on April 7, 2017 with the intended destination of Eugene, Oregon, USA.

28. Decedents were seated and properly lap-belted for the flight.

29. At 7:27 a.m., The National Weather Service Office in Portland, Oregon issued a Wind Advisory, valid through 5:00 p.m., to warn of a south wind of 25 to 35 mph with gusts as high as 60 mph at the surface for an area which included N123SB’s route.

30. At 8:48 a.m. Oakland Center Air Route Traffic Control Center (ARTCC) advised N123SB that Oakland ARTCC was showing moderate precipitation along N123SB’s route.

31. At 9:17 a.m. Oakland ARTCC advised N123SB that Oakland ARTCC was showing moderate to severe precipitation and icing to the west of the flight route and asked for

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N123SB's conditions. N123SB responded that they had less than 1/16th of an inch of ice, but that it was breaking up, and that they were in and out of it, mostly in it. At this time the National Weather Service Storm Prediction Center issued a Day 1 Convective Outlook with areas of general thunderstorms forecast along the N123SB's route.

32. At 10:40 a.m. Cascade Approach ARTCC advised N123SB of moderate to heavy precipitation along N123SB's route and to expect left downwind on its approach.

33. At 10:42 a.m. N123SB reported heavy precipitation.

34. At 10:45 a.m. Cascade Approach ARTCC advised of heavy to extreme precipitation along N123SB's route.

35. At 10:47 a.m. Cascade Approach issued approach clearance to N123SB.

36. At 10:48 a.m. Cascade Approach issued multiple low altitude alerts and climb instruction to N123SB with no response.

37. At approximately 10:48 a.m. N123SB crashed in a grassy field off Peoria Road in Harrisburg, Oregon, killing all on board.

38. Despite having received multiple PIREPs, the controller did not advise the pilot of the dangerous weather conditions along the routes of flight that had been reported by other pilots in violation of FAA Order 7110 "Air Traffic Control."

INJURIES AND DAMAGES

39. As a direct and proximate result of the negligence of Defendant USA through the FAA, the Decedents suffered serious bodily injuries and death, including fear of impending and imminent death, and Plaintiffs have been damaged by the death of Decedents.

40. As a direct and proximate result of the negligence of Defendant USA through the FAA, Plaintiffs suffered and continue to suffer the loss of love, society, solace, companionship, comfort, care, assistance, protection, affection and/or moral support from

Decedents, as well as other pecuniary injuries including grief, sorrow, and mental suffering in an amount to be determined at trial.

41. As a further direct and legal result of the negligence of Defendant USA through the FAA, Plaintiffs incurred funeral and/or burial expenses and/or related medical expenses in an amount according to proof at trial.

42. Defendant is responsible for these damages.

COUNT I

WRONGFUL DEATH AND SURVIVAL CLAIMS; NEGLIGENCE

PLAINTIFFS V. USA

43. Plaintiffs reallege and incorporate all preceding paragraphs by reference herein.

44. Defendant United States of America, acting through its agents and employees of the Department of Transportation, Federal Aviation Administration (“FAA”), office of Air Traffic Organization controlled the flight plan and route, as well as, information relayed to the pilot regarding weather conditions.

45. Defendant USA, by and through its employees and/or agents, caused the injuries and damages sustained by Plaintiff and acted negligently, including but not limited to, through the following actions and/or inactions:

- a. Defendant USA’s failure to provide required advisories;
- b. Failing to adequately train the air traffic controller;
- c. Violating governmental statutes, regulations and requirements including but not limited to Federal Aviation Administration Order 7110.65, “Air Traffic Control”;
- d. Failure to comply with the Defendant’s own safety, operating, and other rules, procedures, and regulations;
- e. Allowing improperly trained and unqualified personnel to provide services to the pilot in question;

- f. Failing to advise pilot of a known dangerous weather situation;
- g. Failure to solicit and disseminate pilot reports from arriving and departing aircraft;
- g. Failing to provide certain accurate information during the flight, including but not limited to weather conditions and additional information that may affect the safety of the flight.

46. Through the actions and inactions described above, and as a direct and proximate result of the negligence described above, Defendant is responsible for the injuries of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment of liability in favor of the Plaintiff and against the Defendant:

- 47. For judgment against Defendant for general and special in an amount to be proven at the time of trial;
- 48. For all costs and expenses herein;
- 49. For prejudgment interest on all damages herein;
- 50. For attorney fees, disbursements, and litigation expenses; and
- 51. For other such relief as this Court deems just and equitable.

Respectfully submitted,

Date: February 20th, 2020

BY: /s/ Kenneth Friedman
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